



Metropolitan Cases

San Luis & Delta Mendota Water Authority v. Jewell (U.S. Court of Appeals, Ninth Circuit) (Delta Smelt Litigation)

On September 2, 2014, San Luis & Delta-Mendota Water Authority, the Coalition for a Sustainable Delta, Westlands Water District, Kern County Water Agency, the State Water Contractors and Metropolitan (plaintiffs) filed their reply to the Federal Agencies and the Intervenor-Defendants-Appellants & Cross-Appellees' (NRDC and The Bay Institute) Opposition to the Plaintiffs' Motion for Stay of Mandate Pending Petition for Certiorari. The motion seeks to preserve the status quo during the period in which the contractors ask the United States Supreme Court to accept the case for review.

The Federal Defendants have opposed the Motion for Stay of Mandate on the grounds that the Supreme Court is unlikely to review the case, issuance of the Mandate will not change the status quo, and requiring the Federal Government to continue with preparation of a new Remand Biological Opinion diverts federal resources from other regulatory tasks. The Ninth Circuit will rule on the motion without holding oral argument but we do not know when a decision will issue.

Association of Confidential Employees (ACE) v. Metropolitan (Public Employment Relations Board)

As previously reported, ACE filed an unfair practice charge with the Public Employment Relations Board (PERB) on May 14, 2013. The charge alleges Metropolitan violated the Meyers-Milias-Brown Act (MMBA) by disciplining an employee for engaging in association activities and for issuing a corrective action plan in connection with the disciplinary action. In response, Metropolitan maintains the discipline is authorized by the parties' MOU and Administrative Code based on the established violation of workplace rules. After ACE amended its charge, PERB issued a complaint against Metropolitan on March 12, 2014. At that stage, the parties attempted but were unable to

reach a resolution through informal mediation. Thereafter, a hearing was held before an administrative law judge (ALJ) on July 29-31, 2014. The next step in the process is to file post-hearing briefs, which are due on October 3. The ALJ will then issue his decision. The law firm of Liebert Cassidy Whitmore is representing Metropolitan. (See General Counsel's September 2013 Activity Report.)

Management and Professional Employees Association (MAPA) v. Metropolitan (MOU Hearing Officer Appeal)

On August 13, 2014, Hearing Officer Barry Winograd issued his written ruling in response to jurisdictional objections raised by Metropolitan to a hearing officer appeal request by MAPA. MAPA's appeal request is based on the denial of a grievance that challenged the creation of a new unrepresented position at the section manager level. Metropolitan argued that unit placements of new positions are not subject to challenge under the MOU procedure because the Administrative Code provides a different appeal mechanism, and because a bargaining unit's challenge to the alleged transfer of bargaining unit work is a type of complaint that is subject to PERB's exclusive jurisdiction under the MMBA. Mr. Winograd overruled Metropolitan's objections, and determined that MAPA's appeal request can move forward to a hearing on the merits. Accordingly, the parties will schedule another hearing date before Mr. Winograd so that he can determine whether the creation of the new unrepresented position violated MAPA's MOU. The Legal Department represents Metropolitan in this matter.

Retired Employees v. Metropolitan (Public Employment Relations Board)

As previously reported, AFSCME Local 1902 and Metropolitan resolved a PERB charge and grievance involving a group of Planner/Schedulers. The PERB charge and grievance sought retroactive wages and promotions going back several years. Key terms of the settlement include AFSCME's withdrawal of the charge, AFSCME's withdrawal of the grievance, and the



retroactive temporary promotion of ten Planner/Schedulers for a period up to eighteen months. A former Planner/Scheduler, who retired well before the settlement was achieved, requested and received a copy of the settlement. Thereafter, he asked Metropolitan to engage in new negotiations with him concerning the same subject matters addressed by the settlement. Metropolitan respectfully declined that request. In response, the retiree lodged a PERB unfair practice charge against Metropolitan on January 23, 2014. His charge alleges Metropolitan violated the MMBA by not including retired employees in the settlement described above. Metropolitan filed a position statement opposing this latest charge. On August 13, 2014, the retiree filed an amended PERB charge. Metropolitan will continue to oppose the charge before PERB. The Legal Department represents Metropolitan in this matter. (See General Counsel's January 2014 Activity Report.)

Bradley Nutt v. Metropolitan, et al.
(Los Angeles County Superior Court)

On July 8, 2014, former Metropolitan employee Bradley Nutt filed a complaint for damages in

Los Angeles County Superior Court against Metropolitan. The complaint alleges religious discrimination and retaliation in violation of the Fair Employment and Housing Act. Metropolitan accepted service of the summons and complaint on July 9, 2014. The Legal Department is representing Metropolitan.

Robert Aluizo v. Metropolitan, et al.
(Los Angeles County Superior Court)

On July 9, 2014, former Metropolitan employee Robert Aluizo filed a complaint for damages in Los Angeles County Superior Court against Metropolitan. The complaint alleges disability discrimination and retaliation in violation of the Fair Employment and Housing Act. Metropolitan accepted service of the summons and complaint on July 9, 2014. The Legal Department is representing Metropolitan.

Orange County Water District v. Northrop Corporation
(Orange County Superior Court)

As anticipated, on August 28, OCWD filed its Notice of Appeal in this matter. The Legal Department will continue to monitor the case.

Other Activities

Finance

Metropolitan priced its \$86,060,000 Water Revenue Refunding Bonds, 2014 Series E, \$7,860,000 Water Revenue Refunding Bonds, 2014 Series F (taxable), and \$57,840,000 Water Revenue Refunding Bonds, 2014 Series G-1, G-2, G-3, G-4 and G-5 on July 28, 2014 and closed the transactions on August 29, 2014. The 2014 Series E, F and G Bonds were issued to refund various series of Water Revenue Bonds that were originally issued in 2004 and 2008. In addition, approximately \$17 million of bond proceeds and other funding sources were used to pay swap counterparties to terminate one interest rate swap and to partially terminate six interest rate swap transactions. The Official Statements describing the 2014 Series E, F and G Bonds are available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access web page at <http://emma.msrb.org/> and on the Finance page of Metropolitan's website, <http://www.mwdh2o.com/mwdh2o/pages/finance/finance01.html>, under "Financial Documents." The

Legal Department prepared Appendix A to the Official Statements and assisted outside bond counsel with the bond documents and closing.

Other Activities

On August 19, 2014, Metropolitan submitted a friend-of-the-court letter urging the California Supreme Court to review the case of *Sierra Club v. County of Fresno* (S219783). If granted, review will clarify the standard of review that courts should apply when faced with the allegation that an EIR's discussion of a significant environmental impact is not sufficiently detailed. Most courts have held that as long as a lead agency has supported its factual conclusions with substantial evidence in the record, the court must defer to the lead agency's discretion as to the scope of analysis in the CEQA document. In contrast, the Court of Appeal in *Sierra Club v. County of Fresno* held that the court should not defer to lead agencies in this regard, but should use its independent judgment to determine if a discussion is sufficient, even if the factual conclusions are supported by substantial



evidence. The case raises other questions regarding how much detail a lead agency must include disclosing the health risks associated with significant project air emissions, as well as a lead agency’s ability to substitute mitigation measures that are at least as effective as those identified in an EIR after project approval without rendering the mitigation impermissibly vague or improperly deferring mitigation. Clarity on the standard of review and the related issues will help Metropolitan comply with CEQA and provide trial and appellate judges with the proper standard of review under CEQA.

On August 28, the Legal Department held a training program for both Legal and General Manager’s staff on e-discovery. The training was presented by outside counsel specializing in e-discovery matters.

Staff continues to work on a variety of Bay-Delta matters and to monitor the State Board relative to the issue of illegal diverters in the Delta.

Jill Teraoka and Eddie Diaz worked on the pre-trial exchange of documents in preparation for the November 2014 legal issues trial in the copper pitting cases.

Matters Received by the Legal Department

<u>Category</u>	<u>Received</u>	<u>Description</u>	
Actions in which MWD is a party	1	<i>Librería Del Pueblo v. City of Fontana, et al.</i> , naming MWD as one of the real parties in interest, relating to the former City of Fontana Redevelopment Agency funding of affordable housing in Fontana	
Government Code Claims	2	Claims submitted for accidents involving MWD vehicles	
Subpoena	1	Subpoena for matter before the Workers’ Compensation Appeals Board	
Public Records Act Requests	11	<u>Requestor</u>	<u>Documents Requested</u>
		4 private citizens	Engineering reports for Garvey Reservoir; MWD Groundwater Quality Report dated May 1994; MWD bid list; nitrate levels in water releases from Skinner to Tualota Creek
		Carob Academy	Photographs of the carob plantation located east of Lake Mathews during the 1930s
		Comcast	Email addresses of active PERS members
		Inland Empire Utility Agency	MWD job descriptions
		Safeway Electric	Bidder information on an MWD construction project
		Union of Concerned Scientists	Source of energy purchased by MWD
		WaterISAC	Circumstances when MWD provides GIS information



<u>Category</u>	<u>Received</u>	<u>Description</u>
		Yale University Student Background information on MWD's conservation programs
Other Matters	3	(1) Notice provided to MWD of chapter 7 bankruptcy filing by an individual; (2) Charge filed with PERB relating to the job classification of Engineering Technician II/Planner/Scheduler; and (3) Department of Fair Employment & Housing (DFEH) Notice of Filing of Discrimination